

Docket No.: 1254-0230P  
(PATENT)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

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In re Patent Application of:  
Takeharu MURAMATSU et al.

Application No.: 10/618,762

Confirmation No.: 6012

Filed: July 15, 2003

Art Unit: 2876

For: CODE STRUCTURE AND CODE READING  
TERMINAL

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Examiner: D. St. Cyr

**APPEAL BRIEF**

MS Appeal Brief - Patents  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

As required under § 41.37(a), this brief is filed within two months of the Notice of Appeal filed in this case on May 30, 2007, and is in furtherance of said Notice of Appeal.

The fees required under § 41.20(b)(2) are dealt with in the accompanying TRANSMITTAL OF APPEAL BRIEF.

This brief contains items under the following headings as required by 37 C.F.R. § 41.37 and M.P.E.P. § 1205.2:

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I. REAL PARTY IN INTEREST

The real party in interest for this appeal is:

Sharp Kabushiki Kaisha

II. RELATED APPEALS AND INTERFERENCES

There are no other appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.

III. STATUS OF CLAIMS

A. Total Number of Claims in Application

There are 12 claims pending in application.

B. Current Status of Claims

1. Claims canceled: 4, 6, 7, 10, 12, 13
2. Claims withdrawn from consideration but not canceled: 1-3,
3. Claims pending: 1-3, 5, 8, 9, 11, 14-18
4. Claims allowed: None
5. Claims rejected: 5, 8, 9, 11, 14-18

C. Claims On Appeal

The claims on appeal are claims 5, 8, 9, 11, 14-18

IV. STATUS OF AMENDMENTS

Applicant did not file an Amendment After Final Rejection.

## V. SUMMARY OF CLAIMED SUBJECT MATTER

The present invention, in preferred embodiments, provides a convenient way of obtaining and playing ring tones from a cellular phone based on a simple coded data. The cellular phone is provided with a capability of automatically distinguishing types of data contained in the coded data. The following claims cover various aspects of the present invention.

### Claim 5

Embodiments of the present invention covered by claim 5 are directed to a cellular phone (e.g., Fig. 1) having a code-reading terminal (e.g., specification at p. 4, ls. 6-8) including an imaging device (e.g., imaging unit/camera 7; specification at p. 4, ls. 20-22) for imaging encoded data (e.g., reading two-dimensional code – specification at p. 5, l. 27; see Figs. 6A and 6B; see bottom paragraph at page 6) including a header portion and a body portion (Fig. 8; specification at p. 6, ls. 15-29; p. 7, ls. 17-29), the header portion including a data identifier (e.g., data identifier D in Fig. 3; specification at p. 7, ls. 18-21) indicating the type of data in the body portion.

The cellular phone includes a data identifying unit (e.g., data identifying function 19a; specification at p. 5, ls. 4-5) that recognizes said data identifier (e.g., Fig. 4, step S3; specification at page 7 - the data identifier is analyzed by the data identifying function 19a of the CPU 19) and estimates the type of said encoded data imaged by said imaging device based on said recognized data identifier (e.g., if the data identifier is “00” or “ff”, the data is determined not to be text data); and a control unit (e.g., CPU 19) that reads the contents of said encoded data in a manner suited for the type of data estimated by said data identifying unit and reproduces the thus read data (e.g., Fig. 8, step S40 – spec at p. 6, ls 26-27; Fig. 4, step S7 text data is displayed – spec at p. 8, l. 3; or step S25 ring tone data is reproduced – spec at p. 7 l. 29, - p. 8, l. 1).

### Claim 8

Embodiments covered by claim 8 are directed to a ring tone data code-reading terminal (e.g., Figs. 1, 2 and 5) comprising an imaging device (e.g., imaging unit/camera 7; specification at p. 4, ls. 20-22) for imaging encoded data (e.g., reading two-dimensional code – specification at p. 5, l. 27; see Figs. 6A and 6B; see bottom paragraph at page 6) comprising a header portion and a body portion (Fig. 8; specification at p. 6, ls. 15-29; p. 7, ls. 17-29), said body portion including encoded ring tone data, and said header portion including a data identifier (e.g., data identifier D in Fig. 3; specification at p. 7, ls. 18-21) indicating the type of data in said body portion.

The ring tone data code-reading terminal includes a data identifier unit (e.g., data identifying function 19a; specification at p. 5, ls. 4-5) for recognizing the data identifier (e.g., Fig. 4, step S3, - specification at page 7 - the data identifier is analyzed by the data identifying function 19a of the CPU 19) and identifying the data type of the encoded data imaged by the imaging unit based on the recognized data identifier (e.g., if the data identifier is “00” or “ff”, the data is determined not to be text data); and a control unit (CPU 19) for reading the contents of said encoded data in a manner suited for the type of data identified by said data identifying unit and for reproducing the thus read ring tone data (e.g., Fig. 8, step S40 – spec at p. 6, ls. 26-27; Fig. 4, step S7 text data is displayed – spec at p. 8, l. 3, or step S25 ring tone data is reproduced – spec at p. 7, l. 29 – p. 8, l. 1).

#### Claim 11

Embodiments of the present invention covered by claim 11 are directed to a recording medium in which a program is recorded for causing a computer to carry out the steps of:

imaging encoded data comprising a header portion and a body portion (e.g., reading two-dimensional code – specification at p. 5, l. 27; see Figs. 6A and 6B; see bottom paragraph at page 6; Fig. 8; specification at p. 6, ls. 15-29; p. 7, ls. 17-29), said header portion including a data identifier (e.g., data identifier D in Fig. 3; specification at p. 7, ls. 18-21) indicating the type of data in said body portion;

recognizing said data identifier (e.g., Fig. 4, step S3, - described at page 7 - the data identifier is analyzed by the data identifying function 19a of the CPU 19; at page 5, the data identifying function 19a is for identifying the type of data that is obtained by reading a code) and identifying the type of said encoded data that has been imaged based on said recognized data identifier (e.g., if the data identifier is “00” or “ff”, the data is determined not to be text data); and

reading the contents of said encoded data in a manner suited for the type of data identified and reproducing the thus read data (e.g., Fig. 8, step S40 – spec at p. 6, ls. 26-27; Fig. 4, step S7 text data is displayed – spec at p. 8, l. 3; or step S25 ring tone data is reproduced – spec at p. 7, l. 29 – p. 8, l. 1).

#### Claim 14

Embodiments of the present invention covered by claim 14 are directed to a code-reading terminal (e.g., Figs. 1, 2 and 5) comprising:

an imaging device (e.g., imaging unit/camera 7; specification at p. 4, ls. 20-22) for imaging encoded data including a header portion and a body portion (e.g., reading two-dimensional code – specification at p. 5, l. 27; see Figs. 6A and 6B; see bottom paragraph at page 6; Fig. 8; specification at p. 6, ls. 15-29; p. 7, ls. 17-29), said header portion including a data identifier (e.g., data identifier D in Fig. 3; specification at p. 7, ls. 18-21) indicating the type of data in said body portion;

a data identifying unit (e.g., data identifying function 19a; specification at p. 5, ls. 4-5) that recognizes said data identifier (e.g., Fig. 4; step S3; specification at page 7 - the data identifier is analyzed by the data identifying function 19a of the CPU 19) from an image of the data identifier output by the imaging device, and estimates the type of said encoded data imaged by the imaging device based on said recognized data identifier (e.g., if the data identifier is “00” or “ff”, the data is determined not to be text data); and

a control unit (e.g., CPU 19 that reads the contents of said encoded data in a manner suited for the type of data estimated by said data identifying unit and reproduces the thus read data (e.g., Fig. 8, step S40 – spec at p. 6, ls. 26-27; Fig. 4, step S7 text data is displayed – spec at p. 8, l. 3; or step S25 ring tone data is reproduced – spec at p. 7, l. 29 to p. 8, l. 1).

#### Claim 15

Embodiments of the present invention covered by claim 15 include the code-reading terminal of claim 14, wherein whether or not the encoded data is encrypted is determined (e.g., Fig. 4, step S17; specification at p. 7, ls. 24-25) and, if encrypted, the data is reproduced after decryption (step S21; specification at p. 7, ls. 25-27).

#### Claim 16

Embodiments of the present invention covered by claim 16 include the code-reading terminal of claim 15, wherein the data type is determined by the data identifying unit when the encoded data is read (specification at p. 7, ls. 17-19), and wherein encrypted data is decrypted and then reproduced (e.g., steps S21, S25; specification at p. 7, ls. 25-27, 29), while unencrypted data is displayed (step S7; specification at p. 7, ls. 27-29; p. 8, ls. 3-5).

## VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Claims 5, 8, 11, 14, 15, 17, and 18 have been rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 5,953,290 to Fukuda et al. (hereinafter “Fukuda”).

Claims 5, 8, 9, 11, 14-18 have been rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 5,659,167 to Wang et al. (hereinafter “Wang”) in view of Fukuda.

## VII. ARGUMENT

**The Examiner's Rejection under Fukuda Fails to Establish *Prima Facie* Anticipation of Independent Claims 5, 8, 11, and 14****1. Argument Summary**

The Examiner's reasoning provided in support of the rejection under 35 U.S.C. §102(b) as being anticipated by Fukuda fails to establish *prima facie* anticipation. Specifically, the deficiencies of the rejection are that the rejection erroneously alleges that elements disclosed in Fukuda teach the claim elements. These deficiencies exist for the rejection of claims 5, 8, 11 and 14. These deficiencies apply as well to claims 15, 17 and 18.

**2. Legal Arguments for Prima Facie Anticipation**

Anticipation is established only when a single prior art reference discloses, expressly or under the principles of inherency, each and every element of a claimed invention as well as disclosing structure which is capable of performing the recited functional limitations. RCA Corp. v. Applied Digital Data Sys., Inc., 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir.); cert. Dismissed, 468 U.S. 1228 (1984); W.L. Gore and Assoc., Inc. v. Garlock, Inc., 721 F.2d 1540, 1554, 220 USPQ 303, 313 (Fed. Cir. 1983), cert. Denied, 469 U.S. 851 (1984).

**3. The Rejection fails to Establish Prima Facie Anticipation of Independent claim 5.**

Claim 5 recites "a cellular phone comprising a code-reading terminal including an imaging device for imaging encoded data including a header portion and a body portion, said header portion including a data identifier indicating the type of data in the body portion."

The Office Action alleges that Fukuda's reading head 202 teaches the claimed "imaging device." The Office Action alleges that Fukuda's header 132 and audio data pack 125 teaches the claimed "header portion" and "body portion," respectively.

However, neither the Office Action nor Fukuda expressly address the claimed “cellular phone.” In addition, Appellants submit that Fukuda fails to expressly disclose the claimed “imaging device” for imaging encoded data including a header portion and a body portion.

Appellants submit that one of ordinary skill in the art would not consider Fukuda’s reading head 802 as being a type of imaging device, as claimed. As disclosed in the present application, a preferred imaging device is a camera. Other conventional imaging devices include a scanner and facsimile.

As an alternative, the term “image” is used in the art to refer to the function of forming a backup image of the hard disk of a computer. However, Fukuda does not disclose such a function, and Appellants submit that a reading head is not considered a type of imaging device, for example since its primary function is not for creating a backup image.

Furthermore, Fukuda’s reading head does not, for example, produce an optical counterpart or visual representation of the optical disk or arrangement of data contained thereon, as would be understood from the term “imaging” by one of ordinary skill in the art. For at least this reason, Appellants submit that Fukuda fails to teach or suggest at least the claimed “imaging device.”

According to the claim, the imaging device images encoded data including a header portion and a body portion. The header portion includes a data identifier indicating a type of data in the body portion.

As can be seen in Fig. 1 of Fukuda, audio data pack 125 includes a header 132 and an audio data stream 133. The reproduction apparatus identifies the data format of the audio data stream 133 by referring to the data format identification information stored in the header 132 (col. 6, lines 30-33).

Appellants submit that the header 132 is not in the same format as the audio data 133. Thus, one of ordinary skill in the art would understand that both the header and audio data pack

are not images, e.g. recorded in the same format. Therefore, Appellants submit that for at least this additional reason Fukuda's reading head 202 does not teach the claimed "imaging device." In other words, Appellants submit that reading head 202 does not teach the claimed imaging device for imaging encoded data including a header portion and a body portion.

This differences over Fukuda are more pronounced in the claimed "data identifying unit that recognizes said data identifier and estimates the type of encoded data imaged by said imaging device based on said recognized data identifier." In other words, the claimed data identifying unit first recognizes the data identifier from the imaged header portion. Appellants submit that one of ordinary skill in the art in the image processing art would understand the difference between recognition of a code in an image from identifying codes contained in the header of Fukuda.

Embodiments of the present invention include a bar code reading mode, which involves steps of "code reading process" (Fig. 8, S38) and "process read data" (Fig. 8, S40, and Fig. 4). The two-dimensional bar code is captured as an image frame and can include both encoded ring tone data and encoded data other than ring tone data (specification at page 1).

To the contrary, Fukuda's step of identifying codes does not include at least a step of first recognizing a data identifier in an image.

Specifically regarding claim 5, Appellants submit that Fukuda fails to explicitly disclose a cellular phone having a data identifying unit that recognizes the data identifier in the imaged header portion, as well as that estimates the type of encoded data imaged by the imaging device based on the recognized data identifier.

#### **4. The Rejection fails to Establish Prima Facie Anticipation of Independent claims 8, 11 and 14.**

Specifically regarding claim 8, Appellants submit that Fukuda fails to explicitly disclose a ring tone data code-reading terminal having a data identifier unit for recognizing the data

identifier in the imaged header portion, as well as identifying the type of encoded data imaged by the imaging device based on the recognized data identifier.

Specifically regarding claim 11, Appellants submit that Fukuda fails to explicitly disclose a recording medium in which a program is recorded for causing a computer to carry out a step of recognizing the data identifier in an imaged header portion, as well as identifying the type of encoded data imaged by the imaging device based on the recognized data identifier.

Specifically regarding claim 14, Appellants submit that Fukuda fails to explicitly disclose a code-reading terminal having a data identifying unit that recognizes the data identifier from an image of the data identifier output from an imaging device, as well as that estimates the type of the encoded data imaged by the imaging device based on the recognized data identifier.

The arguments regarding the rejection of claim 14 apply as well to claims 15, 17, 18.

At least for the above reasons, Appellants request that the rejection be reconsidered and withdrawn.

**The Examiner's Rejection under Wang in view of Fukuda Fails to Establish *Prima Facie* Obviousness of Independent Claims 5, 8, 11, and 14**

**5. Argument Summary**

The Examiner's reasoning provided in support of the rejection under 35 U.S.C. §103(a) as being unpatentable over Wang and Fukuda fails to establish *prima facie* obviousness. Specifically, the deficiencies of the rejection are that the rejection erroneously alleges that elements disclosed in Wang and Fukuda teach the claim elements. Appellants submit that Wang and Fukuda, either alone or in combination, fail to teach each and every claimed element.

These deficiencies exist for the rejection of claims 5, 8, 11 and 14. These deficiencies apply as well to claims 9, 15-18.

## 6. Legal Requirements of Prima Facie Obviousness

To establish *prima facie* obviousness, all claim limitations must be taught or suggested by the prior art and the asserted modification or combination of the prior art must be supported by some teaching, suggestion, or motivation in the applied references or in knowledge generally available to one skilled in the art. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988); *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). The prior art must suggest the desirability of the modification in order to establish a *prima facie* case of obviousness. *In re Brouwer*, 77 F.3d 422, 425, 37 USPQ2d 1663, 1666 (Fed. Cir. 1995). It can also be said that the prior art must collectively suggest or point to the claimed invention to support a finding of obviousness. *In re Hedges*, 783 F.2d 1038, 1041, 228 USPQ 685, 687 (Fed. Cir. 1986); *In re Ehrreich*, 590 F.2d 902, 908-909, 200 USPQ 504, 510 (C.C.P.A. 1979).

The teaching or suggestion to make the asserted combination or modification of the primary reference must be found in the prior art and cannot be gleaned from applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). In other words, the use of hindsight to reconstruct the claimed invention is impermissible. *Uniroyal Inc. v. Rudlan-Wiley Corp.*, 5 USPQ 1434 (Fed. Cir. 1983).

Finally, when considering the differences between the primary reference and the claimed invention, the question for assessing obviousness is not whether the differences themselves would have been obvious, but instead whether the claimed invention as a whole would have been obvious. *Stratoflex Inc. v. Aeroquip Corp.*, 713 F.2d 1530, 218 USPQ 871 (Fed. Cir. 1983).

## 7. The Rejection fails to Establish Prima Facie obviousness of Independent claims 5, 8, 11, 14, and claim 16.

Embodiments of the present invention include an operational mode for reading a two-dimensional bar code, which involves a frame capture event (in particular "code reading process" S38 in Fig. 8; described relative to Figs. 5 to 8 on pages 5 to 7; examples of two-dimensional codes are shown in Figs. 6 and 7). Embodiments of the present invention provide an approach to the case where two-dimensional codes include data other than ring tone data recorded together

with the ring tone data (specification at page 1). In particular, the two-dimensional codes are divided into a header portion and a body portion, wherein the header portion contains a data identifier for indicating the type of data contained in the body portion (Fig. 3 and associated description at page 5). Following the “code reading process,” is processing of the read data (“process read data” S40 in Fig. 8, and Fig. 4).

Provided the captured frame image for the two-dimensional bar code, in processing the read data, a data identifier is analyzed by a data identifying function 19a. If the data identifier is “00” or “ff”, the data is determined not to be text data (Fig. 4, step S3). Subsequently, steps associated with reproducing ring tone are carried out (steps S11 to S27). Otherwise, if the data identifier indicates that the data in the body portion is text data, the text data is displayed (Fig. 4, step S7).

These functions are reflected in claims 5, 8, 11, 14, for example as recited in claim 5, as “an imaging device for imaging encoded data including a header portion and a body portion including a data identifier identifying the type of data in the body portion” (e.g., the disclosed “code reading process”), and “a data identifying unit that recognizes said data identifier and estimates the type of said encoded data imaged by said imaging device based on the recognized data identifier” (e.g., “process read data”).

The Office Action relies on Wang’s disclosure of reading dataforms encoded as a data code matrix or a two-dimensional bar code. As alleged in the Office Action, Wang teaches a decoder 36 having a capability of automatically determining the type of datacode represented by the pixel image data (col. 8, lines 14-22).

Appellants submit that although Wang discloses a dataform that can be of a two-dimensional bar code, Wang fails to disclose a two-dimensional bar code having two types of data recorded therein. The Office Action appears to admit that Wang fails to teach a two-dimensional bar code image having a header portion including a data identifier indicating the type of data in the body portion (Office Action at page 4, first full paragraph). Instead, the Office Action relies on Fukuda for making up for the deficiency of Wang.

As noted above, Fukuda's header 132 is referred to in identifying the type of data format of the audio data stream 133 (e.g., PCM, MPEG, audio, AC3 etc.) for purposes choosing the appropriate reproduction system (Fukuda at col. 6, lines 28-35). Appellants submit that neither Wang nor Fukuda disclose a unit for recognizing a data identifier encoded in the header of a two-dimensional bar code image. Thus, Appellants submit that the combination of Wang and Fukuda would still suffer from the problem disclosed in the present specification that if a different type of data is encoded in the two-dimensional code together with ring tone data, the reader might mistake the other data for ring tone data, causing the cellular phone to malfunction (specification at page 1, "Background Art"). In other words, Appellants submit that Wang does not disclose a unit for discriminating two types of data encoded in a two-dimensional code image, as it merely teaches discrimination of the type of dataform in the entire pixel image. Furthermore, Fukuda relies on a capability of being able to identify the data format of the audio data stream. Appellants submit that if the header 132 were to be encoded in a two-dimensional code image, Fukuda's reproduction apparatus would most likely produce errors in reproducing the audio data stream as it would try to reproduce the header as audio data.

For at least these reasons, Appellants submit that Fukuda and Wang, either alone or in combination, fail to teach each and every claimed element of claims 5, 8, 11, and 14, as well as respective dependent claims 9 and 15-18. Thus, Appellants request that the rejection be reconsidered and withdrawn.

Further with respect to claim 16, Appellants submit that Fukuda and Wang, either alone or in combination, fail to teach the claimed feature of determining whether encoded data is encrypted, and "wherein encrypted data is decrypted and then reproduced, while unencrypted data is displayed."

At least for this additional reason, Appellants request that the rejection of claim 16 be reconsidered and withdrawn.

VIII. CLAIMS

A copy of the claims involved in the present appeal is attached hereto as Appendix A. As indicated above, the claims in Appendix A include the amendments filed by Applicant on December 28, 2005.

Date: July 10, 2007

Respectfully submitted,

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**APPENDIX A**

**Claims Involved in the Appeal of Application Serial No. 10/618,762**

5. A cellular phone comprising a code-reading terminal including an imaging device for imaging encoded data including a header portion and a body portion, said header portion including a data identifier indicating the type of data in the body portion;

a data identifying unit that recognizes said data identifier and estimates the type of said encoded data imaged by said imaging device based on said recognized data identifier; and

a control unit that reads the contents of said encoded data in a manner suited for the type of data estimated by said data identifying unit and reproduces the thus read data.

8. A ring tone data code-reading terminal comprising:

an imaging device for imaging encoded data comprising a header portion and a body portion, said body portion including encoded ring tone data, and said header portion including a data identifier indicating the type of data in said body portion;

a data identifier unit for recognizing the data identifier and identifying the data type of the encoded data imaged by the imaging unit based on the recognized data identifier; and

a control unit for reading the contents of said encoded data in a manner suited for the type of data identified by said data identifying unit and for reproducing the thus read ring tone data.

9. A cellular phone comprising the code-reading terminal according to claim 8.

11. A recording medium in which a program is recorded for causing a computer to carry out the steps of:

imaging encoded data comprising a header portion and a body portion, said header portion including a data identifier indicating the type of data in said body portion;

recognizing said data identifier and identifying the type of said encoded data that has been imaged based on said recognized data identifier; and

reading the contents of said encoded data in a manner suited for the type of data identified and reproducing the thus read data.

14. A code-reading terminal comprising:

an imaging device for imaging encoded data including a header portion and a body portion, said header portion including a data identifier indicating the type of data in said body portion;

a data identifying unit that recognizes said data identifier from an image of the data identifier output by the imaging device, and estimates the type of said encoded data imaged by the imaging device based on said recognized data identifier; and

a control unit that reads the contents of said encoded data in a manner suited for the type of data estimated by said data identifying unit and reproduces the thus read data.

15. The code-reading terminal according to claim 14, wherein whether or not the encoded data is encrypted is determined and, if encrypted, the data is reproduced after decryption.

16. The code-reading terminal according to claim 15, wherein the data type is determined by the data identifying unit when the encoded data is read, and wherein encrypted data is decrypted and then reproduced, while unencrypted data is displayed.

17. The code-reading terminal according to claim 14, wherein said data identifying unit determines whether the type of the encoded data is either ring tone data or data other than ring tone data based on the recognized data identifier, and if the encoded data is determined to be ring tone data, the data in the body portion is reproduced by said control unit.

18. The code-reading terminal according to claim 14, wherein said data identifying unit determines whether the type of the encoded data is either ring tone data or data other than ring tone data based on the recognized data identifier, and if the encoded data is determined to be

data other than ring tone data, the data other than ring tone data is displayed on the display unit by said control unit.

**APPENDIX B**

No evidence pursuant to §§ 1.130, 1.131, or 1.132 or entered by or relied upon by the examiner is being submitted.

**APPENDIX C**

No related proceedings are referenced in II. above, hence copies of decisions in related proceedings are not provided.